IN THE

Supreme Court of the United States

October Term, 1940.

No. 637.

MEYER ABRAMS,
Petitioner,

v.

LEHIGH VALLEY RAILROAD COMPANY, et al.

Brief on Behalf of Respondent Opposing Petition for Writ of Certiorari.

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Eastern Bank Note Co., Phila., Pa.

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BRIEF ON BEHALF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

PRELIMINARY STATEMENT.

This is an appeal from an order (R. 14) entered on October 21, 1940 by a Special Court convened in the Eastern District of Pennsylvania to hear a petition for adjustment of debt of railroad corporations under the provisions of Chapter XV of the Bankruptcy Act (as added July 28, 1939 c. 393, 53 Stat. 1135, 11 U. S. C. A. § 1200 ff.), which established judicial machinery for adjusting the debts of railroad corporations.

The proceedings before the Special Court were initiated on August 7, 1939 by Lehigh Valley Railroad Company (to be referred to as "Lehigh") and certain of its subsidiaries. Those companies filed petitions for modification of their interest charges and principal maturities and for approval of a plan of debt adjustment in accordance with Chapter XV.

Meyer Abrams, an attorney (to be referred to as "Petitioner") appeared in those proceedings solely because he was retained to represent one individual holding bonds of Lehigh.

After approval by the Special Court of the proposed plan of adjustment (34 F. Sup. 750) the Petitioner asked the Court below to compel Lehigh to pay him a fee, despite the admitted fact that he had never been employed by or represented it in the proceeding for adjustment of debt. Lehigh objected to such an order (R. 14). The Special Court entered an order approving various amounts to be paid to various counsel whom Lehigh had employed or agreed to pay, but held that under the terms and intent of Chapter XV it had no jurisdiction to entertain petitions for compensation by persons who had not been employed by Lehigh, the debtor railroad. Petitioner seeks review of that ruling.

Chapter XV became effective July 28, 1939 and provides that the jurisdiction conferred by it shall not be exercised after July 31, 1940 except in a proceeding initiated by filing a petition under the Act on or before that date.

OPINION OF THE COURT BELOW.

The Opinion of the Court below has not been reported. As authority for the ruling now challenged it relied upon an opinion dealing with the identical point, *In re Baltimore & Ohio R. R.*, 34 F. Sup. 154 (D. Md. 1940).

QUESTIONS PRESENTED.

1. In view of the limited scope of Chapter XV, does the present petition present a question of sufficient public interest to justify review by this Honorable Court of the action of the Special Court in declining to order payment of a fee to the Petitioner?

2. In view of the limited and special character of the jurisdiction conferred upon the Special Court by Chapter XV, had the Special Court the power to order the debtor railroad to pay a fee to the Petitioner?

3. Is not the fact that the Special Court had in its possession or control no fund or money whatsoever fatal to the Petitioner's contention that the Special Court should have ordered the debtor railroad to pay a fee to him?

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI.

1. The present case arises under Chapter XV, which was limited by its terms to an effective life of one year during which petitions under it might have been filed. The limited scope of the Act makes it evident that questions concerning the right of counsel for dissenting interests to have ordered the payment of fees to him are matters of no public interest, with which this Honorable Court need not concern itself.

2. The limited and special character of the jurisdiction created by Chapter XV makes it impossible to infer that in enacting it Congress intended that a Special Court, acting under its terms, should have the authority to order a debtor railroad, petitioning for relief under it, to pay fees to persons not employed by the debtor.

3. Under the terms of Chapter XV, no fund whatsoever comes before a Special Court convened under its terms and hence the Court has no authority to order payments which the debtor railroad has not agreed to make.

ARGUMENT.

The Petitioner is an attorney who appeared in the proceedings below to represent an individual bondholder. Lehigh has never agreed and objects to its paying his fee. The Court below held that it had no power to compel payment. The Petition for Certiorari questions that conclusion.

The questions presented by this Petition involve solely a construction of the terms and scope of the Act of July 28, 1939, Chapter XV of the Bankruptcy Act. Although that Act is included in the Bankruptcy section of the United States Code, its provisions and purposes differ radically from the ordinary bankruptcy or reorganization procedure. It creates only a legal procedure for giving effect to a plan for relief of a debtor railroad which has been worked out by the railroad itself. A railroad may take advantage of the Chapter's provisions only if it has itself prepared a plan for adjustment of its debt (Section 710, 11 U. S. C. A. § 1210) and if the plan has been approved by substantial percentages of affected persons and by the Interstate Commerce Commission; and the only function of the Court prescribed in the Statute is to approve or disapprove the plan. Specific tests are prescribed for approval and confirmation (Section 725, 11 U. S. C. A. § 1225). While it is true that the Special Court may itself propose modifications in the plan (Section 721, 11 U. S. C. A. § 1221), such modifications can be effective only if they are agreed to by affected holders of the railroad's securities and by the Interstate Commerce Commission (*Ibid*).

The only affirmative action prescribed by the Act to be taken by the Court in connection with a plan submitted to it is a direction that if the Court approves the plan, it shall make the plan binding upon all security holders of the petitioning railroad (Section 725, 11 U. S. C. A. § 1225).

The jurisdictional provisions of the Act reflect clearly its limited character. Most important is the provision of Section 715 (11 U. S. C. A. § 1215) which provides that nothing in the Act "shall be construed to authorize the [Special Court] to appoint any trustee or receiver for [the properties of the petitioning railroad] or any part thereof, *or otherwise take possession of such properties or control the operation or administration thereof.*" (Emphasis supplied.)

Section 700 (11 U. S. C. A. § 1200) confers upon courts of bankruptcy original jurisdiction "for postponements or modifications of debt, interest, rent, and maturities or for modifications of the securities or capital structures of railroads."

Section 713 (11 U. S. C. A. § 1213) provides that the Special Court after its convening "shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy *necessary to carry out the intent and provisions of this chapter, . . .*" (Emphasis supplied.)

Section 715 (11 U. S. C. A. § 1215) provides that after approval of the petition the Special Court "shall have exclusive jurisdiction of the [petitioning railroad] and of its property wherever located *to the extent which may be necessary to protect the same against any action which might be inconsistent with [the plan of adjustment proposed] or might interfere with the effective execution of said plan if approved by the court, or otherwise inconsistent with or contrary to the purposes and provisions of this chapter: . . .*" (Emphasis supplied.)

By its terms the Act permits bankruptcy courts to exercise the limited jurisdiction conferred only if petitions

for adjustment of debt were filed between July 28, 1939 and July 31, 1940 (Section 755, 11 U. S. C. A. § 1255).

I. In View of the Limited Application of Chapter XV, This Petition for Certiorari Presents a Question of No Public Interest.

This is not an application involving a question important to general bankruptcy practice. The effective life of Chapter XV is little more than a year. Except in the cases of petitions for adjustment of debt filed before July 31, 1940, the Act is dead. A determination by this Court of its scope will have no practical effect for the future. Counsel have been able to find only five cases other than the present one in which jurisdiction of a Special Court has been invoked,[1] and in at least one of them the questions now raised have already been decided (B. & O. case, 34 F. Sup. 154).

In these circumstances it is manifest that interpretation of the Act is not a matter of great moment and has little public interest. Counsel submit that the petition for a Writ of Certiorari should be denied for that reason.

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[1] In re Baltimore & Ohio Railroad Company, 29 F. Sup. 608 (D. Md. 1939);

In re Wichita Falls & Southern Railway Company, 30 F. Sup. 750 (N. D. Texas, 1939);

In re Montana W. & S. Railroad Company, 32 F. Sup. 200 (D. Mont. 1940);

In re Chicago Memphis & Gulf Railroad Company (N. D. Ill., unreported);

In re Peoria & Eastern Railway Company (S. D. N. Y., unreported); and the present case.

II. Chapter XV Contains No Specific Authority for an Order by a Special Court Sitting to Administer It Directing a Petitioning Railroad to Pay Fees to Counsel Not Employed by It.

Counsel for the Petitioner makes little effort to argue that the order denied him by the Special Court sitting below is authorized expressly by Chapter XV. In fact careful examination of the Act will show that the only reference to fees and expenses in the entire chapter is contained in Section 725 (6) [11 U. S. C. A. § 1225 (6)]. That section provides that as a condition to its confirmation of the plan the Special Court, sitting to administer Chapter XV, must find that the petitioning railroad has disclosed or will disclose to it all amounts or considerations directly or indirectly paid or to be paid by the railroad and that such amounts or considerations are fair and reasonable.

It is manifest that this provision gives the present Petitioner for a Writ of Certiorari no comfort or support. Its sole purpose is to require scrutiny by the Special Court of the circumstances under which the petitioning railroad has procured acceptance of its plan and of the amounts or considerations which the petitioning railroad has paid or promised to pay in the course of its procuring that acceptance. Presumably if the Court should find that the petitioning railroad had paid or promised to pay too much or if the cost of promulgating and giving effect to a plan was disproportionate to its prospective benefits, the Court might refuse to approve the plan submitted unless the payments promised were reduced. But this is the most that can be said for this provision. It certainly is not a specific direction to the Special Court to allow fees to persons whom the petitioning railroad had not undertaken to pay.

The present petitioner is just such a person. He was retained by an individual bondholder. He appeared in the hearings upon the plan submitted to represent the interest of that bondholder. From that bondholder he should procure his compensation. Certainly Congress has not expressly directed the Special Court sitting to administer Chapter XV to order the petitioning railroad to pay him.

III. The Limited Character of the Jurisdiction Conferred Upon a Special Court Sitting to Administer Chapter XV Precludes the Conclusion That That Court Had Authority to Enter an Order Directing the Petitioning Railroad to Pay an Attorney Retained by One of Its Bondholders and Not by It.

We have already pointed out that the only jurisdiction conferred by Chapter XV upon a Special Court, sitting to administer it, is to make effective a preconceived arrangement for postponement or modification of debt, interest, principal, maturities, etc., (Section 700, 11 U. S. C. A. § 1200). In administering the Act, the Special Court is expressly forbidden by its terms to take possession of any property of the petitioning railroad or to control the operation or administration of that property (Section 715, 11 U. S. C. A. § 1215).

This latter provision is the clearest indication that the Special Court below concluded rightly that Congress did not intend to confer upon it the power to direct Lehigh, the petitioning railroad, to pay an attorney whom it had not agreed to pay and whom it had not even employed. It seems too clear for argument that had the Court directed Lehigh to pay such a person, it would have been controlling the operation or administration of Lehigh's property—its cash. Lehigh's counsel stated expressly that Lehigh ob-

jected to paying the present petitioner for Writ of Certiorari, (R. 14). Any order by the Special Court over this objection clearly would have been an effort to control the administration of Lehigh's assets; and this was expressly forbidden by Chapter XV.

But in any case the jurisdiction of the Special Court conferred by Chapter XV was so limited in its scope that the Court could not have directed payment by Lehigh to an attorney who was a volunteer in the proceeding for adjustment of debt and who did not claim that Lehigh had employed him or undertaken to pay him. In this connection counsel for the Petitioner urges that Chapter XV conferred upon the Special Court the jurisdiction of a Court of Bankruptcy (Section 700, 11 U. S. C. A. § 1200) and of a Court of Equity (Section 713, 11 U. S. C. A. § 1213); and from these bare phrases, jerked violently from their context, he argues that the general powers of the Court were such that it must have had the authority to order Lehigh to pay a fee to an attorney whom Lehigh had not employed or agreed to pay. He argues that the Special Court must have had power to order payment of the fee since a Court of Bankruptcy or a Court of Equity in a reorganization or receivership proceeding would have had the power to order payment upon a similar application.

This argument ignores wholly the limited character of Chapter XV, the fact that the Chapter expressly forbids the Court to take possession or to control the administration of any property of the petitioning railroad, and the very setting in which these references in Chapter XV to equity and bankruptcy powers were embedded.

Counsel have already pointed out that the only jurisdiction conferred upon the Special Court was to give effect to a preconceived plan for modification of debt. This lim-

itation was expressly linked to the reference to "Courts of Bankruptcy" (Section 700, 11 U. S. C. A. § 1200). The reference to a court of equity was followed in the same breath by the limitation that such powers should be only those "*necessary to carry out the intent and provisions*" of Chapter XV (§ 713, 11 U. S. C. A. § 1213). Counsel for the Petitioner omits to refer to either of these qualifications.

There is no conceivable reason for supposing that the power of the Court to give effect to a preconceived plan for adjustment of debt filed by a petitioning railroad under Chapter XV includes by implication or inference the power to order the petitioning railroad to pay a fee to some attorney who appears in the proceeding at the behest of an individual bondholder; and indeed the petition for Certiorari suggests no reason for supposing that the power to order payment of fees is a necessary incident to the power to give effect to a plan for adjustment of debt. The petition relies wholly upon the reference in Chapter XV to the powers of Courts of Equity or of Bankruptcy, neglecting the context of that reference and paying no attention to pertinent provisions of Chapter XV. It follows that the argument must fail.

It is true that the Petitioner makes some reference to the reasons which move a Court of Equity to direct payment to attorneys for intervening parties if they have conserved or augmented a fund in the possession of the Court. Counsel propose to demonstrate that those cases are wholly inapplicable because under the terms of Chapter XV no fund comes before the Special Court. But passing that for the moment, they wish to point out that the reasons which move a Court of Equity to grant such an order in receivership proceedings are inapplicable here. Before the protec-

tion of Chapter XV can be invoked, the petitioning railroad must have procured assents to the proposed plan by creditors holding two-thirds of the aggregate amount of the claims affected by the plan, including at least a majority of the aggregate amount of the claims of each affected class [Section 710 (3), 11 U. S. C. A. § 1210 (3)]. The plan must have been examined and aproved by the Interstate Commerce Commission [Section 710 (2), 11 U. S. C. A. § 1210 (2)], and the Commission must have made comprehensive findings concerning the adequacy and fairness of the plan (*Ibid.*). In examining the plan, the Court is directed to make similar comprehensive findings irrespective of the action of the Interstate Commerce Commission [Section 725 (3), 11 U. S. C. A. § 1225 (3)] and of the fact that security holders affected by the plan have assented to its terms (*Ibid.*); and the Court must find, before approving the plan, that the plan itself has been approved by creditors affected by it holding more than three-fourths of the aggregate amount of the claims affected, including at least three-fifths of the aggregate amount of the claims of each affected class [Section 725 (2), 11 U. S. C. A. 1225 (2)].

It is manifest that the protection expressly granted to all security holders by these requirements for repeated and comprehensive scrutiny of the plan makes unnecessary any stimulus to shareholders and their attorneys in the shape of assurance that if they can compel some modification of the plan the fees of the attorneys will be paid by the petitioning railroad. This is not a case where a plan must be formulated and tested under the supervision of the Court. A plan submitted for approval under the terms of Chapter XV must have been tumbled about and predigested before it even comes before the Court. The Court itself must

analyze it carefully, as must t[he Interstate Commerce Com-
mission. It seems evident th[at any objection to the plan
made before submission or in [Court is essentially an arm's
length negotiation between th[e petitioning railroad and its
security holders, be they few [or many, and there is no rea-
son for ordering the petition[ing road to pay counsel for
individual bondholders who a[ppear voluntarily and for the
sake of protecting individual [interests.

IV. The Contrast Between Cha[pter XV and Other Chapters of the Bankruptcy Act M[akes It Clear That Congress Did Not Intend That the Special Court Below Should Have the Authority to Di[rect the Petitioning Railroad to Pay an Attorney for an Individual Bondholder.

Counsel have already dem[onstrated that there is noth-
ing in Chapter XV expressly conferring upon the Special
Court below the power which i[t decided it did not have. The
argument for granting certi[orari therefore hangs solely
upon the proposition that Ch[apter XV, defining jurisdic-
tion of the Court below, infer[entially authorized the order
which the Court below refuse[d. But counsel have already
shown that the purposes and p[rovisions of the Act negative
the inference that Congress [intended to confer any such
power. And that negation is [amplified greatly when Chap-
ter XV is contrasted with ot[her provisions of the Bank-
ruptcy Act defining the powe[rs of a Bankruptcy Court in
other proceedings for the rel[ief of debtors. Both Section
77 (dealing with railroad reo[rganizations) as amended [11
U. S. C. A. § 205 (c) (12)] a[nd Section 77b (dealing with
corporate reorganizations) as [amended similarly (Chapter
X, subchapter XIII, 11 U. S. [C. A. § 641 ff.) contain elabo-
rate provisions for the allowa[nce of compensation to attor-

neys for intervening parties. There is not a word of similar tenor in Chapter XV. The conclusion seems inescapable that, considered with the unique features of the purpose and scope of Chapter XV, this omission is fatal to the argument that one can infer an intention of Congress that a Special Court sitting under Chapter XV should have the authority to order the petitioning railroad to pay counsel for intervening parties.

V. The Power of Any Court to Order Payment of Compensation to an Attorney by Anyone Except the Client Whom He Represents Can Be Exercised Only When There Is Before the Court a Fund From Which the Fee Can Be Paid.

Chapter XV, standing alone or examined in conjunction with other portions of the Bankruptcy Act shows clearly that no express or implied statutory authority was conferred upon the Special Court below to order the payment of a fee to any attorney who has not been employed by the petitioning railroad but who seeks an order to compel the payment of his fee. In attempting to find authority where there is none, counsel for the Petitioner argues that the power to order such a payment is inherent in the Court below as a Court of Equity.

Counsel submit respectfully that the decided cases show beyond a doubt that if no special statutory authority to order payment of such a fee exists, even a court sitting in equity, unlimited by the restrictive language of Chapter XV, can compel the payment of a fee to an attorney by someone other than his own client only if there is in the possession of the Court a fund over which the Court can exercise control; see *In Re National Carbon Co.,* 241 Fed. 330 (C. C. A. 6th, 1917); *In re Veler,* 249 Fed. 633 (C. C. A. 6th,

1918); *In re Forty-One Thirty-Six Wilcox Building Corporation,* 100 F. (2d) 588 (C. C. A. 7th, 1938).

That there was no fund in the control of the Special Court below is abundantly clear from the terms and purposes of Chapter XV. That Chapter differs radically from the ordinary proceeding for corporate reorganization. A petitioning railroad does not throw itself and its property into the arms of the Court. It works out its own salvation and then appears before the Court as an ordinary party litigant asking judicial aid. The aid prescribed by Chapter XV is in effect an injunction directed to security holders of the petitioning railroad and to all the world forbidding them to do anything inconsistent with the plan of adjustment proposed, if that plan be approved by the Court. No receiver is appointed, no trustee is appointed—for both appointments are expressly forbidden by the Act (§ 715, 11 U. S. C. A. § 1215). No part of the railroad property comes under the control of the Court; and the Court is forbidden to take possession of such property or to control its administration or operation (*Ibid.*).

The Chapter simply authorizes the Court to exercise *jurisdiction* over the property, not for the purpose of controlling it or administering it, but for the sole purpose of throwing around it the protection of judicial injunction against interference inconsistent in any respect with the proposed plan of adjustment. There is in the possession of the Court no fund, no property of any kind, out of which payment of a fee to an attorney of an intervening security holder can be ordered. An order by the Special Court directed to the petitioning railroad to pay such a fee would be a plenary order not authorized by statute and not within the intent of the Act.

Counsel have been able to find no case and the petitioner for Certiorari has cited none which sustains the authority of any Court of Equity to issue such an order. It follows that the argument for the petitioner fails and that he has shown no power in the Special Court sitting below to order the payment of a fee to him.

VI. The Argument in Support of the Petition Fails to Establish Any Defect in the Conclusion of the Court Below.

Counsel for the Petitioner argues that the Court below held improperly that Section 725 (6) of Chapter XV [11 U. S. C. A. § 1225 (6)] limits the power of a Special Court to grant the order which Petitioner sought. An examination of the opinion *In re Baltimore & Ohio R. R. Co.*, 34 F. Sup. 154, upon which the Court relied, shows that this was not the holding of the Court. The Court observed correctly that this was the only section of Chapter XV dealing with fees, and hence inferred that Congress intended that the Court should have no other power concerning fees. To meet this proposition, Counsel for the Petitioner suggests nothing. Counsel then argues that the Special Court had power to award the order because it had the powers of a court of Bankruptcy or of Equity. This ignores the qualification of Chapter XV that these powers are given only for the purposes of the Chapter, which is distinctly limited in character. Counsel for the Petitioner argues that the Special Court had constructive possession of Lehigh's property but ignores the provision of Chapter XV that the Court *could not have taken* such possession—and so fails to surmount the difficulty that there was no fund out of which payment of a fee could have been ordered. The sum of the argument

is that it points to no weakness in the conclusion of the Special Court.

CONCLUSION.

Counsel for the Respondent submit respectfully that the argument in support of the Petition for Certiorari can succeed only if it shows that from the terms of Chapter XV there appears an express or implied grant by Congress to the Court below of the power to order Lehigh, over its objection, to pay to Petitioner a fee for his services to an individual bondholder; that it is manifest that there was before the Court no fund from which payment of such a fee could have been ordered; that Chapter XV, in its terms and by contrast with other provisions for the relief of debtors, demonstrates that Congress intended that the Special Court should have no such power; and that the question which Petitioner presents is of no public interest or importance which can justify this Honorable Court's taking jurisdiction of the matter.

They respectfully request that the Petition for Writ of Certiorari be denied.

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